

Sexual Harassment

Employer's Duty to provide a safe work place. Therefore the work place must be free of sexual harassment

**ZERO Tolerance to Violence
MEANS
ZERO Tolerance To Sexual
Harassment**

Ahmad Zailani Junoh v. Alam Flora
[2008] 2 LNS 0104 MAS v. Wan Sa'aidi
[2008] 4 ILR 72

Words can amount to sexual harassment.

**Gestures, calls, email,
letters can also
amount to sexual
harassment. Any
unwanted attention.**

**Burden of Proof
Is On
COMPANY
& Company Relies
On
VICTIM/Claimant**

**Jennico Associates Sdn.
Bhd.**

v

**Lilian Therera De Costa
and Anor**

[1998] 3 CLJ 583

[1996] 2 ILR 1765 (IC)

**High Court
referred to
Federal Court
decisions in
criminal cases**

High Court: The evidence of a complainant in a sexual harassment case is quite similar to that of an accomplice. While it would not be unlawful to convict merely on the evidence of an accomplice, it is imperative for the court to warn itself of the dangers of convicting the accused person merely on the uncorroborated evidence of the accomplice.

If the court were to convict on the uncorroborated evidence of an accomplice, it must give reasonable grounds as to why it was safe in such circumstances to do so. "The same principle should apply in the case of the uncorroborated evidence of a complainant in a sexual offence."

Corroboration

***BANK ISLAM
MALAYSIA BERHAD
V
MOHD NASIR ATAN***

[2016] 1 LNS 1711

That you had between 8.01 am and 8.09 am on 9 July 2012, alleged to have hugged and kissed an office cleaner. Puan Rodziah Binti Mokhtar, who is employed by the Bank's appointed janitor company, Ekatrade Sdn Bhd, in the toilet and/or pantry area on the Ground Floor of Bank Islam Kulaijaya Branch premises.

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Pleadings

Eusoff Chin CJ:

*It is trite law
that a party is
bound by its
pleadings*

**R Rama Chandran v
The Industrial Court
of Malaysia & Anor
Federal Court
[1997] 1 MLJ 145**

- . *The Industrial Court must*
 - a. *scrutinize the pleadings and identify the issues, take evidence, hear the parties' arguments and finally pronounce its judgment having strict regard to the issues;*
 - b. *cannot ignore the pleadings and treat them as mere pedantry or formalism, because if it does so, it may lose sight of the issues, admit evidence irrelevant to the issues or reject evidence relevant to the issues and come to the wrong conclusion;*
 - c. *failed to consider the allegations of misconduct but simply concluded that because the letter of termination was grounded on retrenchment exercise (see p 178B-D).*

**Ranjit Kaur S. Gopal
Singh**

v

**Hotel Excelsior (M) Sdn.
Bhd.**

[2010] 3 CLJ 310

Court of Appeal

[2010] 8 CLJ 629

CA:[52] Next, the Industrial Court also concluded that the respondent employer was practising double standards in electing to punish the appellant employee and not another and for that reason the Industrial Court held that the respondent employer had acted unreasonably. But, sad to say, this was not the issue that was raised by the appellant employee in the pleadings and so it was an irrelevant consideration.

FC:[29] Pleadings in the Industrial Court are as important as in the civil courts. The appellant must plead its case and the Industrial Court must decide on the appellant's pleaded case. This is important in order to prevent element of surprise and provide room for the other party to adduce evidence once the fact or an issue is pleaded.

FC:[29] Thus, the Industrial Court's duty, to act according to equity, good conscience and substantial merits of the case without regard to technicalities and legal form under S30(5), does not give the Industrial Court the right to ignore the Industrial Court Rules 1967 made under the principal Act.

**Universiti Islam
Antarabangsa
Malaysia
V**

**Nik Roskiman Abdul
Samad & Anor**

[2017]1 MELR

[2016] 4 ILR 351

HC: para [19]

**Telekom Malaysia
Kawasan Utara**

v

**Krishnan Kutty a/l
Sanguni Nair & Anor**

[2002] 3 MLJ 129

(1) The Industrial Court should not be burdened with the technicalities regarding the standard of proof, the rules of evidence and procedure that are applied in the court of law. The Industrial Court should be allowed to conduct its proceedings as a 'court of arbitration', and be more flexible in arriving at its decision, so long as it gives special regard to substantial merits and decide a case in accordance with equity and good conscience (see p 137B-C).

(2) The Industrial Court should be allowed to discharge its functions as it was intended to by statute. The Industrial Court should be more flexible to enable it to regulate the relations between employers and workmen and to prevent and settle differences and disputes arising from their relationship (see p141D-E).

(3) On the facts, the employee was not charged with a criminal offence of theft under the Penal Code. The proceedings was not a criminal prosecution. The Industrial Court was not going to convict the respondent as in a criminal prosecution. He was not going to be sentenced to an imprisonment or a fine or both. The parties appearing or representing the parties in the court were non-lawyers, except with permission of the court. The acts alleged to have been committed by the employee varied from insubordination, being absent without leave or just excuse to misappropriating the employer's property. There is no reason why for some wrongs the standard of proof is lighter than in the other when the final orders, is the same (see p.137D-B).

(4) The representations by the Minister to the Industrial Court should not be classified as 'civil' or 'criminal' and different burdens of proof applied in respect of each classification as is done in a court of law when finally the awards that follow are the same: dismissal or whatever. Such an exercise would also mean that it is more difficult to dismiss an employee who commits a more serious wrong than a less serious one. That does not appear to be right. It also means that no disciplinary action can be taken against an employer who had been charged for a criminal offence in court but was acquitted (see p 137F-G).

(5) The standard of proof required, is the civil standard based on the balance of probabilities, which is flexible, so that the degree of probability required is proportionate to the nature of gravity of the issue. But these are not 'passwords' in that the failure to use them or if some other words are used, the decision is automatically rendered bad in law (see p 141C-D).

S. (28) Industrial Relations Act 1967

Power of President to regulate procedure and proceedings.

Save as otherwise expressly herein provided and subject to any regulations that may be made in that behalf, the President may regulate the procedure and proceedings of the Court as he thinks fit and, with the approval of the Minister, make rules governing such procedure and proceedings.

Industrial Relations Act 1967 (Act 177)

S. 30(5) The Court shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal form.

S.30 (6) IRA: In making its award, the Court shall not be restricted to the specific relief claimed by the parties or to the demands made by the parties in the course of the trade dispute or in the matter of the reference to it under section 20(3) but may include in the award any matter or thing which it thinks necessary or expedient for the purpose of settling the trade dispute or the reference to it under section 20(3).

INDUSTRIAL COURT RULES 1967

Rule 9 - Statement of Case

Rule 10 - Statement in Reply

Rule 11 - Rejoinder

Rule 9 (3): Such Statement of Case shall be confined to the issues which are included in the Case referred to the Court by the Minister or in the matter required to be determined by the Court under the provisions of the Act and shall contain –

- (a) a statement of all relevant facts and arguments
- (b) particulars of decisions prayed for:
- (c) an endorsement of the name of the first party and of his address for service: and
- (d) as an appendix or attachment, a bundle of all relevant documents relating to the case.

Rule 10 (3): Such Statement in Reply shall be confined to the matters raised in the Statement of Case and to any issues which are included in the case referred to the Court by the Minister or in the matter required to be determined by the Court under the provisions of the Act and which may have been omitted from the Statement of Case and shall contain—

- (i) a statement of all relevant facts and arguments;
- (ii) particulars of decisions prayed for;
- (iii) an endorsement of the name of the opposite party and of his address for service; and
- (iv) as an appendix or attachment, a bundle of all relevant documents relating to the case and which have not already been included in the Statement of Case.

UNILEVER (M)
HOLDINGS SDN BHD
V

SO LAI & ANOR
[2015] 3 CLJ 900

Section 6

Civil Law Act

Employee charged but
not convicted
DNAA

Thank you